

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

JAMES A. LEWIS, JR.,

Plaintiff,

v.

EQUIFAX INFORMATION SERVICES,
LLC, EXPERIAN INFORMATION
SOLUTIONS, INC., TRANS UNION, LLC
and CAPITAL ONE BANK, N.A.

Defendants.

Case No. 3:25-CV-53

**DEFENDANT CAPITAL ONE’S ANSWER
AND AFFIRMATIVE DEFENSES TO PLAINTIFF’S COMPLAINT**

Defendant Capital One, N.A. (“Capital One”), erroneously sued as “Capital One Bank, N.A.”¹ by and through its undersigned counsel, hereby files its Answer and Affirmative Defenses to the Complaint (the “Complaint”) of plaintiff James A. Lewis, Jr. (“Plaintiff”), and further states as follows:

AS TO “INTRODUCTORY STATEMENT”

1. Capital One admits only that Plaintiff purports to raise causes of action for violations of the FCRA. Capital One denies that it acted unlawfully or engaged in any conduct that violated the FCRA or any other statute or law, with regard to Plaintiff. Capital One denies that it is liable for any of the damages, injuries, or harms alleged by Plaintiff. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations

¹ On October 1, 2022, Capital One Financial Corporation completed the merger of its wholly-owned subsidiary Capital One Bank (USA), National Association with and into Capital One, N.A., a wholly-owned subsidiary of Capital One Financial Corporation, with Capital One, N.A. as the surviving entity.

regarding the alleged actions of other parties and/or non-parties and, as such, the allegations are denied. To the extent any other response is required, denied.

AS TO “JURISDICTION, VENUE and JURY DEMAND”

2. Capital One admits that this Court would have jurisdiction but for the fact that Plaintiff lacks standing under Article III.

3. Capital One does not dispute venue for the purposes of this response.

4. Capital One admits that the court would have jurisdiction. Capital One denies that it acted unlawfully or engaged in any conduct that caused “tortious damages” to Plaintiff.

Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations regarding the alleged actions of other parties and/or non-parties and, as such, the allegations are denied. To the extent any other response is required, denied.

5. Capital One admits only that Plaintiff has demanded a trial by jury, but denies that Plaintiff is entitled to a jury trial.

AS TO “PARTIES”

6. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and, as such, any such allegations are denied. To the extent any other response is required, denied.

7. The allegations in this paragraph refer to a state statute, the text of which speaks for itself, and Plaintiff’s characterization thereof, if any, is denied.

8. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and, as such, the allegations are denied. To the extent any other response is required, denied.

9. The allegations in this paragraph refer to a state statute, the text of which speaks for itself, and Plaintiff’s characterization thereof, if any, is denied. Capital One is without

knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and, as such, the allegations are denied. To the extent any other response is required, denied.

10. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and, as such, the allegations are denied. To the extent any other response is required, denied.

11. The allegations in this paragraph refer to a state statute, the text of which speaks for itself, and Plaintiff's characterization thereof, if any, is denied. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and, as such, the allegations are denied. To the extent any other response is required, denied.

12. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and, as such, the allegations are denied. To the extent any other response is required, denied.

13. The allegations in this paragraph refer to a state statute, the text of which speaks for itself, and Plaintiff's characterization thereof, if any, is denied. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and, as such, the allegations are denied. To the extent any other response is required, denied.

14. Capital One admits only that it is a national banking association with headquarters located in Virginia.

15. Admitted.

16. Capital One admits only that Plaintiff will refer to Capital One as “The Furnisher Defendant,” in his Complaint.

AS TO “FACTS”

17. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph regarding the alleged actions of other parties and/or non-parties and, as such, the allegations are denied.

18. Denied.

19. Capital One continues to research the truth of the allegations in this paragraph and, as such, the allegations are denied.

20. The allegations of this paragraph constitute a legal conclusion as to which no response is required. To the extent that a response is required Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and, as such, any such allegations are denied.

21. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph regarding the alleged actions of other parties and/or non-parties and, as such, the allegations are denied.

22. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph regarding the alleged actions of other parties and/or non-parties and, as such, the allegations are denied. As to the remaining allegations Capital One continues to research the truth of the allegations in this paragraph and, as such, the allegations are denied.

23. Capital One continues to research the truth of the allegations in this paragraph and, as such, the allegations are denied.

24. Capital One continues to research the truth of the allegations in this paragraph and, as such, the allegations are denied.

25. Capital One continues to research the truth of the allegations in this paragraph and, as such, the allegations are denied.

26. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph regarding the alleged actions of other parties and/or non-parties and, as such, the allegations are denied.

27. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph regarding the alleged actions of other parties and/or non-parties and, as such, the allegations are denied.

28. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph regarding the alleged actions of other parties and/or non-parties and, as such, the allegations are denied.

29. Denied. Capital One specifically denies that it acted unlawfully or engaged in any conduct that violated the FCRA, or any other statute, with regard to Plaintiff. To the extent any other response is required, denied.

30. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph regarding the alleged actions of other parties and/or non-parties and, as such, the allegations are denied.

31. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph regarding the alleged actions of other parties and/or non-parties and, as such, the allegations are denied.

32. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph regarding the alleged actions of other parties and/or non-parties and, as such, the allegations are denied.

33. Denied. Capital One specifically denies that it acted unlawfully or engaged in any conduct that violated the FCRA, or any other statute, with regard to Plaintiff. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph regarding the alleged actions of other parties and/or non-parties and, as such, the allegations are denied. To the extent any other response is required, denied.

34. Denied. Capital One specifically denies that it acted unlawfully or engaged in any conduct that violated the FCRA, or any other statute, with regard to Plaintiff. To the extent any other response is required, denied.

35. Denied. Capital One specifically denies that it acted unlawfully or engaged in any conduct that violated the FCRA, or any other statute, with regard to Plaintiff. To the extent any other response is required, denied.

36. Capital One denies that it acted unlawfully or engaged in any conduct that violated the FCRA or any other statute or law, with regard to Plaintiff. Capital One denies that it is liable for any of the damages, injuries, or harms alleged by Plaintiff. Further, Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations regarding the alleged actions of other parties and/or non-parties and, as such, the allegations are denied. To the extent any other response is required, denied.

37. Denied. Capital One specifically denies that it acted unlawfully or engaged in any conduct that violated the FCRA, or any other statute, with regard to Plaintiff. To the extent any

other response is required, Capital One admits that Capital One filed a lawsuit against Mr. Lewis related to the debt.

**AS TO “COUNT I – CLAIMS FOR RELIEF AS TO FURNISHER DEFENDANT
15 U.S.C. § 61681S2[b]”**

38. Capital One incorporates by reference all responses to the above paragraphs of the Complaint as though fully stated herein.

39. Denied. Capital One specifically denies that it acted unlawfully or engaged in any conduct that violated the FCRA, or any other statute, with regard to Plaintiff. To the extent any other response is required, denied.

40. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations regarding the alleged actions of other parties and/or non-parties and, as such, the allegations are denied.

41. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations regarding the alleged actions of other parties and/or non-parties and, as such, the allegations are denied.

42. Capital One admits only that Plaintiff appears to inadvertently left this allegation blank.

43. Denied. Capital One specifically denies that it acted unlawfully or engaged in any conduct that violated the FCRA, or any other statute, with regard to Plaintiff. Capital One denies that it is liable for any of the damages, injuries, or harm alleged by Plaintiff. To the extent any other response is required, denied.

44. Denied. Capital One specifically denies that it acted unlawfully or engaged in any conduct that violated the FCRA, or any other statute, with regard to Plaintiff. To the extent any other response is required, denied.

45. Capital One denies that Plaintiff is entitled to any damages, costs, fees or other relief from or against Capital One and demands judgment in its favor and against Plaintiff, together with such other relief, including costs and attorneys' fees, as the Court deems just and proper

46. Capital One specifically denies that it acted unlawfully or engaged in any conduct that violated the FCRA, or any other statute, with regard to Plaintiff. Capital One denies that Plaintiff is entitled to any damages, costs, fees or other relief from or against Capital One and demands judgment in its favor and against Plaintiff, together with such other relief, including costs and attorneys' fees, as the Court deems just and proper

**AS TO "COUNT II – CLAIM FOR RELIEF AS TO EQUIFAX, TRANSUNION AND
EXPERIAN 15 U.S.C. § 1681e[b]"**

47. Capital One incorporates by reference all responses to the above paragraphs of the Complaint as though fully stated herein.

48. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations regarding the alleged actions of other parties and/or non-parties and, as such, the allegations are denied. To the extent any further response is required, denied.

49. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations regarding the alleged actions of other parties and/or non-parties and, as such, the allegations are denied. To the extent any further response is required, denied.

50. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations regarding the alleged actions of other parties and/or non-parties and, as such, the allegations are denied. To the extent any further response is required, denied.

51. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations regarding the alleged actions of other parties and/or non-parties and, as such, the allegations are denied. To the extent any further response is required, denied.

52. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations regarding the alleged actions of other parties and/or non-parties and, as such, the allegations are denied. To the extent any further response is required, denied.

**AS TO “COUNT III – CLAIM FOR RELIEF AS TO EQUIFAX, TRANSUNION AND
EXPERIAN 15 U.S.C. § 1681e[b]”**

53. Capital One incorporates by reference all responses to the above paragraphs of the Complaint as though fully stated herein.

54. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations regarding the alleged actions of other parties and/or non-parties and, as such, the allegations are denied. To the extent any further response is required, denied.

55. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations regarding the alleged actions of other parties and/or non-parties and, as such, the allegations are denied. To the extent any further response is required, denied.

56. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations regarding the alleged actions of other parties and/or non-parties and, as such, the allegations are denied. To the extent any further response is required, denied.

57. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations regarding the alleged actions of other parties and/or non-parties and, as such, the allegations are denied. To the extent any further response is required, denied.

58. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations regarding the alleged actions of other parties and/or non-parties and, as such, the allegations are denied. To the extent any further response is required, denied.

59. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations regarding the alleged actions of other parties and/or non-parties and, as such, the allegations are denied. To the extent any further response is required, denied.

60. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations regarding the alleged actions of other parties and/or non-parties and, as such, the allegations are denied. To the extent any further response is required, denied.

61. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations regarding the alleged actions of other parties and/or non-parties and, as such, the allegations are denied. To the extent any further response is required, denied.

62. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations regarding the alleged actions of other parties and/or non-parties and, as such, the allegations are denied. To the extent any further response is required, denied.

AS TO “WHEREFORE”

Capital One denies that Plaintiff is entitled to any damages, costs, fees or other relief from or against Capital One and demands judgment in its favor and against Plaintiff, together with such other relief, including costs and attorneys’ fees, as the Court deems just and proper.

AFFIRMATIVE DEFENSES

Having answered the Complaint, Capital One asserts the following affirmative defenses. By asserting these defenses, Capital One does not assume the burden of proof where it otherwise rests with Plaintiff.

FIRST AFFIRMATIVE DEFENSE

Plaintiff fails to state any claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the doctrine of release and/or waiver.

THIRD AFFIRMATIVE DEFENSE

Plaintiff is barred from relief against Capital One inasmuch as any alleged harm suffered by Plaintiff was not caused in fact or proximately caused by any act or omission of Capital One.

FOURTH AFFIRMATIVE DEFENSE

To the extent Plaintiff has suffered any damages as a result of the matters alleged in the Complaint, Plaintiff failed to mitigate her damages.

FIFTH AFFIRMATIVE DEFENSE

Any and all damages sustained by Plaintiff are the direct result of his own actions or omissions or the acts or omissions of unrelated third parties over which Capital One has no control.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the doctrines of unclean hands, estoppel, laches, acquiescence, and other doctrines of equitable relief.

SEVENTH AFFIRMATIVE DEFENSE

Capital One has acted in good faith and not willfully, maliciously, recklessly, wantonly, and/or negligently.

EIGHTH AFFIRMATIVE DEFENSE

Capital One has acted with due care at all times and complied with all applicable laws, regulations, and standards and otherwise acted reasonably.

NINTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the applicable statute of limitations.

TENTH AFFIRMATIVE DEFENSE

Capital One has not violated any duty or obligation owed to Plaintiff under common law, statute, any applicable contract, or other authority.

ELEVENTH AFFIRMATIVE DEFENSE

To the extent Plaintiff claims Capital One willfully violated the FCRA, which Capital One denies, any purported violation was not willful because Capital One's interpretation of the FCRA is not objectively unreasonable. *See, e.g., Safeco Ins. Co. of Am. v. Burr*, 551 U.S. 47, 70 (2007).

TWELFTH AFFIRMATIVE DEFENSE

The FCRA does not provide a private right of action for the furnishing of inaccurate information and though framed as an investigation claim, Plaintiff's claims are in fact based on the reporting of information.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiff lacks Article III standing to pursue these claims.

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred due to an absence of any actual damages. Hence, any statutory damages constitute an excessive fine and violate Capital One's rights under the Due Process and Takings Clause of the United States Constitution and/or applicable state constitutions.

FIFTEENTH AFFIRMATIVE DEFENSE

Plaintiff has not sufficiently alleged, and cannot establish, malice, willfulness, or negligence on the part of Capital One.

SIXTEENTH AFFIRMATIVE DEFENSE

Plaintiff is not entitled to punitive damages.

SEVENTEENTH AFFIRMATIVE DEFENSE

To the extent Capital One was required to investigate Plaintiff's purported disputes, Plaintiff failed to provide Capital One with sufficient information to enable it to perform a reasonable investigation of the alleged disputes. *See, e.g., Westra v. Credit Control of Pinellas*, 409 F.3d 825, 827 (7th Cir. 2005).

EIGHTEENTH AFFIRMATIVE DEFENSE

Capital One is entitled to its attorneys' fees pursuant to 15 U.S.C. § 1681n(c) and § 1681o(b).

NINETEENTH AFFIRMATIVE DEFENSE

Capital One reserves the right to assert additional defenses at such time and to such extent as warranted by discovery and the factual developments of this case.

Respectfully submitted,

DATED: February 18, 2025

/s/ John D. Sadler

John D. Sadler, Esq. VSB (80026)

1909 K Street, NW, 12th Floor

Washington, DC 20006-1157

Telephone: (202) 661-7659

Facsimile: (202) 661-2299

sadlerj@ballardspahr.com

Attorneys for Defendant Capital One, N.A.

CERTIFICATE OF SERVICE

I hereby certify that on February 18, 2025, I have caused a true and correct copy of the foregoing to be served with the Clerk of Court and on all parties of recording using the CM/ECF system.

/s/ John D. Sadler

John D. Sadler